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6 Partners, Inc.

7 **UNITED STATES DISTRICT COURT**
8 **NORTHERN DISTRICT OF CALIFORNIA**

9
10 SECURITIES AND EXCHANGE
11 COMMISSION,

12 Plaintiff,

13 v.
14

15 JOHN B. BIVONA; SADDLE RIVER
16 ADVISERS, LLC; SRA MANAGEMENT
17 ASSOCIATES, LLC; FRANK GREGORY
18 MAZZOLA

19 Defendants.

20 } Case No. 3:16-cv-1386
21 } RECEIVER'S
22 } ADMINISTRATIVE
23 } APPLICATION FOR AN
24 } ORDER PURSUANT TO
25 } LOCAL RULE 7-11 FOR THE
26 } APPROVAL OF FEES FOR
27 } THE PERIOD JULY 1 TO
28 } SEPTEMBER 30, 2018, FOR
THE RECEIVER AND
COUNSEL
Date: December 13, 2018
Time: 1:30 PM
Courtroom: 5
Judge: Edward M. Chen

20 **APPLICATION FOR PAYMENT OF RECEIVER'S AND COUNSEL'S
21 FEES**

22 **I. Background**

23 On October 11, 2016, this Honorable Court issued an Order of
24 Appointment of Receiver (the "Order") and thereby appointed Sherwood
25 Partners, Inc. ("Sherwood") as Receiver in this matter. The Order also
26 appointed John W. Cotton ("Cotton") of Gartenberg, Gelfand & Hayton LLP
27 as Counsel to the Receiver. Previously, the Receiver and its counsel
28 submitted interim applications for fees and expenses for the time periods

1 October 11, 2016, to March 31, 2017 (See: Docket Nos. 207 and 215, First
 2 Quarterly Fee Application filed on July 13, 2017, and approved on July 25,
 3 2017 and August 11, 2017); April 1 to June 30, 2017 (See: Docket No. 275,
 4 Second Quarterly Fee Application filed on October 19, 2017 and approved,
 5 but with a 20% holdback for Sherwood on *both* the first (retroactive) and
 6 second fee applications, on November 16, 2017); July 1 to September 30,
 7 2017 (See: Docket No. 303, Third Quarterly Fee Application, filed on
 8 December 26, 2017 and approved by the Court on January 25, 2018);
 9 October 1 to December 31, 2017 (See: Docket No. 315, Fourth Quarterly
 10 Fee Application, approved by the Court on March 13, 2018); January 1 to
 11 March 31, 2018 (See: Docket No. 387, Fifth Quarterly Fee Application,
 12 approved by the Court on August 2, 2018, but with an additional hold-back
 13 of 10% or \$7,507) and April 1 to June 30, 2018 (See: Docket No. 413, Sixth
 14 Quarterly Fee Application, approved by the Court on October 23, 2018, but
 15 with an additional hold-back of 50% or \$35,888.58)..

16 The total fees and expenses of the Receiver approved by the Court to
 17 date total \$639,845.00¹ and the total fees and expenses of the Receiver's
 18 counsel approved by the Court and paid to date are \$214,349.50. The total
 19 fees and expenses of the Receiver being requested in this Seventh
 20 Quarterly Application (the "Application") are \$70,853.35, as set forth in
 21 Sec. II below. The total fees and expenses of the Receiver's counsel
 22 requested in this Application, are \$27,065.50 as set forth in Sec. III below.

23 Sherwood has, after discussion with the staff of plaintiff SEC, agreed
 24 to a holdback of 30% of the fees requested in this Application, in the dollar
 25

26 ¹ This amount is exclusive of the amount paid to Sherwood for work performed
 27 during the period March to October, 2016, \$203,925.53, when it acted as
 28 Independent Monitor. The Court ordered holdbacks to the Receiver's approved
 fee applications, which currently total \$116,303.11 and have not been paid to
 the Receiver.

1 amount of \$21,256.01. This amount if approved by the Court, when added
 2 to the previous amount of holdbacks, brings the total amount of holdbacks
 3 to \$137,559.12.

4 In this Application, Sherwood through Georgiana Nertea ("Nertea"),
 5 requests that this Court approve its Seventh Quarterly fees and expenses
 6 as well as that of its Counsel, for the time period July 1, 2018 to and
 7 including September 30, 2018. The Application consists of the
 8 accompanying Declaration of Nertea, the time records of Sherwood
 9 (Exhibit A to the Declaration of Nertea), a narrative of the work
 10 performed by Sherwood (Exhibit B to the Declaration of Nertea) and the
 11 SEC's Standard Fund Accounting Report ("SFAR", Exhibit C to the
 12 Declaration of Nertea). The Receiver also requests approval for the fees of
 13 his counsel, John W. Cotton for the same time period. The Declaration of
 14 John W. Cotton with accompanying billing statements from his firm
 15 (Exhibit A to the Declaration of Cotton) also accompanies this Application.

16 **II. The Fee Application of Sherwood**

17 As the Declaration of Nertea sets forth, the interim period for
 18 which it makes this Application is July 1, 2018 to and including September
 19 30, 2018. During this time period, the personnel who worked on this
 20 matter, and their discounted hourly rates include Mr. Andrew De Camara
 21 (\$510), and Georgiana Nertea (\$295). Sherwood's total charge for time
 22 and disbursements in this interim fee request is \$70,853.35. This
 23 represents a total of 229.90 hours, or 76.63 hours per month. Nertea Decl.
 24 at ¶ 3.

25 Sherwood has applied a 15% reduction to its standard rate. Nertea
 26 Decl., at ¶ 3. Nertea has personally reviewed all the time spent by
 27 Sherwood personnel on Receivership tasks and has attested to the
 28 accuracy and appropriateness of the time billed and has set forth the

1 major work categories in which time was spent. Nertea Decl., at ¶4.
 2 Finally, Nertea has prepared the required SEC Standard Fund Accounting
 3 Report, or "SFAR", for the period covered by this Application. Nertea Decl.,
 4 at ¶ 5.

5 Nertea has broken down the total billed hours to the following
 6 organized task categories: Asset management (63.3 hours); Investor and
 7 Creditor relations (20 hours); Investors' Group Communications (17.6
 8 hours) Records Management (7.1 hours); Case Support and Administration
 9 (40.6 hours); SEC support (9.70 hours); Claims and litigation (13 hours);
 10 Solis Funds Associates, LLC (2 hours); and Tax Related Matters (56.6)
 11 Nertea Decl., at ¶ 4.

12 **III. The Fee Application of Sherwood's Counsel**

13 As the Declaration of John Cotton of Gartenberg, Gelfand & Hayton
 14 ("GG&H") sets forth, the period for which it makes its Seventh interim fee
 15 application is July 1, 2018 to and including September 30, 2018. Nearly all
 16 the time spent on Receivership legal matters were undertaken by Cotton
 17 alone, at a reduced billing rate of \$450 an hour.² GG & H's total charge for
 18 time (\$29,647.50) and disbursements (\$418) in this Application is
 19 \$30,065.50. This represents a total of 66.81 hours, or 22.27 hours per
 20 month. Cotton Decl. at ¶ 3. GG & H has applied a 15% courtesy reduction to
 21 its standard rate and has only used personnel appropriate to the level of
 22 work being undertaken. Cotton Decl., at ¶ 3. Cotton has personally
 23 reviewed all the time spent on Receivership tasks and has attested to the
 24 accuracy and appropriateness of the time billed and has set forth the
 25 major work categories in which time was spent. Cotton Decl. at ¶¶4 to 6.
 26

27 ² Another member of the Gartenberg firm, Rebecca Gundzik, spent 3.3 hours
 28 of time drafting a complaint to be used against a forward contract seller who
 had defaulted. Her time was billed at an hourly rate lower than Mr. Cotton's.

1 During the time period of this Application, the work performed
2 by Cotton consisted of the following work categories: responding to and
3 advising the Receiver (18.3 hours); responding to and meeting with the
4 SEC concerning SRA IG investor group concerns and the Joint Plan of
5 Distribution (11.7 hours); review, preparation of and filing court
6 documents (15 hours); responding to and attending investor and
7 Defendants' counsel calls and related questions (5 hours); and handling
8 issues and communications regarding Estate investments: Mongo DB,
9 EAC, Practice Fusion, etc. (16.8 hours) . Cotton Declaration at ¶ 4.

10 As set forth in the Declaration of Cotton, at ¶ 6, after review
11 and discussion with the SEC, Cotton and his firm have agreed to a write-
12 off of \$3,000 from the current invoice total of \$30,065.50, which
13 represents a negotiated amount for time spent on the current and prior
14 fee applications of the Receiver in connection with its bills and
15 accompanying write-offs and holdbacks. It was the SEC's position that
16 such time of counsel, while perhaps benefitting the Receiver, did not
17 directly benefit the receivership estate or its beneficiaries. As a result, it
18 was agreed by the Receiver's counsel and the plaintiff SEC that the
19 deduction of \$3,000 which was acceptable to counsel, would accomplish
20 the goal of not penalizing the estate. Therefore, the total amount being
21 applied for by the Receiver's counsel in this Application is \$27,065.50.

22 **IV. The SEC Has Reviewed the Accompanying Fee Invoices**

23 The Receiver and its counsel timely submitted their
24 accompanying fee applications to the Plaintiff SEC for its initial review as
25 required by the Court on October 15, 2018. The SEC and Receiver, held a
26 subsequent, substantive conversation regarding the Receiver and
27 Counsel's invoices, as a result of which the Receiver has agreed to a 30%
28 holdback and the Receiver's counsel has agreed to a negotiated write off

1 of \$3,000. Nertea Declaration at ¶ 4; and Cotton Declaration at ¶ 6. As a
2 result of the foregoing, the SEC has indicated that it has no objection to
3 the fees now applied for in this Application, for either the Receiver, or its
4 counsel. The Receiver has agreed to this holdback amount. At this time
5 the SEC is not recommending any holdback for the Receiver's counsel.
6 (The amount of holdback is set forth in the accompanying proposed
7 order.) The SEC has also agreed that in order to hear this application at
8 the December 13, 2018 hearing, that it would not oppose the use of L.R. 7-
9 11 to hear this application on shortened time. Counsel for the Receiver
10 has obtained the approval of all other parties' counsel to the use of L.R. 7-
11 11 as well.

12 **V. Conclusion**

13 For the forgoing reasons, the Receiver and his counsel request that
14 the Court approve the Application for Seventh Quarterly Fees by signing
15 the attached Proposed Order.

16
17 Dated: November 16, 2018

GARTENBERG GELFAND HAYTON
18 LLP

19 By: /s/ John W. Cotton

20 John W. Cotton
21 Counsel to the Receiver

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